

## STATUTORY INSTRUMENTS

# 1986 No. 595

## The Mental Health (Northern Ireland) Order 1986

### PART III

#### PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

##### *Procedure during trial on indictment*

##### ***Procedure in relation to unfitness to be tried***

**49.**—(1) The following provisions of this Article apply where, on the trial of a person charged on indictment with the commission of an offence, the question arises (at the instance of the defence or otherwise) whether the accused is unfit to be tried (in this Article referred to as “the question of fitness to be tried”).

(2) Subject to paragraph (3), the question of fitness to be tried shall be determined as soon as it arises.

(3) If, having regard to the nature of the supposed mental condition of the accused, the court is of opinion that it is expedient so to do and in the interests of the accused, the court may—

- (a) postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence; and
- (b) if, before the said question falls to be determined, the jury returns a verdict of acquittal on the count or each of the counts on which the accused is being tried, that question shall not be determined.

(4) The question of fitness to be tried shall be determined<sup>[F1]</sup> by the court without a jury].

<sup>[F2]</sup>(4A) <sup>[F1]</sup>The court] shall not make a determination under paragraph (4) except on the oral evidence of a medical practitioner appointed for the purposes of Part II by <sup>[F3]</sup>RQIA] and on the written or oral evidence of one other medical practitioner.]

*Paras. (5)#(8) rep. by 1996 NI 24*

(9) In this Article and<sup>[F2]</sup> Articles 49A, 50A and 51(6)] “unfit to be tried” includes unfit to plead.

**F1** 2004 c. 28

**F2** 1996 NI 24

**F3** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

##### **Modifications etc. (not altering text)**

**C1** Art. 49 modified (temp.) (2.4.2020) by [Coronavirus Act 2020 \(c. 7\), s. 87\(2\), Sch. 10 para. 10\(1\)\(2\)](#) (with [ss. 88-90, Sch. 10 para. 2](#)); S.R. 2020/58, [art. 2\(c\)](#)

**Changes to legislation:** The Mental Health (Northern Ireland) Order 1986, Cross Heading: Procedure during trial on indictment is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

**C2** Art. 49 expiry of earlier affecting provision 2020 c. 7, Sch. 10 paras. 3-13 (25.3.2022) by [Coronavirus Act 2020 \(c. 7\), s. 89](#) (with s. 90)

#### [<sup>F4</sup>Finding that the accused did the act or made the omission charged against him

**49A.**—(1) This Article applies where in accordance with Article 49(4) it is determined by a [<sup>F5</sup>court] that the accused is unfit to be tried.

(2) The trial shall not proceed or further proceed but it shall be determined by a jury—

- (a) on the evidence (if any) already given in the trial; and
- (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this Article to put the case for the defence,

whether it is satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.

(3) If as respects that count or any of those counts the jury is satisfied as mentioned in paragraph (2), it shall make a finding that the accused did the act or made the omission charged against him.

(4) If as respects that count or any of those counts the jury is not so satisfied, it shall return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

[  
<sup>F5</sup>(5) Where the question of fitness to be tried was determined after arraignment of the accused, the determination under paragraph (2) is to be made by the jury by whom he was being tried.]]

**F4** [1996 NI 24](#)  
**F5** [2004 c. 28](#)

#### *Procedure in relation to finding of insanity*

**50.**—(1) Where upon the trial on indictment of any person charged with the commission of an offence—

- (a) [<sup>F6</sup>oral evidence of a medical practitioner appointed for the purposes of Part II by [<sup>F7</sup>RQIA] and on the written or oral evidence of one other medical practitioner] is given that the person charged was an insane person at the time the offence was committed; and
- (b) the jury finds that although the person charged did the act or made the omission charged, he was an insane person at that time,

the court shall direct a finding to be recorded to the effect that the person is not guilty of the offence charged on the ground of insanity.

*Paras. (2), (3) rep by 1996 NI 24*

(4) In this Article “insane person” and “insanity” have the meanings assigned by section 1 of the Criminal Justice Act (Northern Ireland) 1966.

**F6** [1996 NI 24](#)  
**F7** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to Sch. 6 para. 8(2)-(4)); S.R. 2009/114, [art. 2](#)

#### **Modifications etc. (not altering text)**

**C3** Art. 50(1) modified (temp.) (2.4.2020) by [Coronavirus Act 2020 \(c. 7\), s. 87\(2\), Sch. 10 para. 10\(1\)\(2\)](#) (with ss. 88-90, Sch. 10 para. 2); S.R. 2020/58, [art. 2\(c\)](#)

**Changes to legislation:** *The Mental Health (Northern Ireland) Order 1986, Cross Heading: Procedure during trial on indictment is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

**C4** [Art. 50\(1\)](#) expiry of earlier affecting provision 2020 c. 7, Sch. 10 paras. 3-13 (25.3.2022) by [Coronavirus Act 2020 \(c. 7\), s. 89](#) (with s. 90)

**Changes to legislation:**

The Mental Health (Northern Ireland) Order 1986, Cross Heading: Procedure during trial on indictment is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 5 Pt. 2 repealed in part by [S.I. 2003/435 \(N.I.\) Sch. 5](#) (text not available on [Legislation.gov.uk](#))
- Sch.05 Pt. 1 rev. in pt. by [1995 c. 35 s. 29\(2\)Sch. 3](#)
- Sch. 5 Pt. 2 rev. in pt. by [1998 c. 47 s. 100\(2\)Sch. 15](#)
- art. 14A inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 10](#)
- art. 36(2)(za) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 22\(3\)](#)
- art. 36(3)(e) and word inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 22\(4\)\(d\)](#)
- art. 37(1)(za) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 23\(2\)\(a\)](#)
- art. 37(1A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 23\(3\)](#)
- art. 52 rev. by [1996 c. 46 s. 35\(2\)Sch.7 Pt. 3](#)
- art.52 rev. (DrosD,) by [1996 c. 46 s. 35\(2\)Sch.7 Pt.III](#)
- art. 63A63B inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 31](#)
- art. 67(2A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 35\(4\)](#)
- art. 83(4A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 48\(4\)](#)
- art. 120(4) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 59\(4\)](#)
- art. 133(2A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 68\(4\)](#)